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BEFORE THE
PUBLIC SERVICE COMMISSION OF KENTUCKY

PUBLIC SERVICE
COMMISSION

In the Matter of

Application of Lake Forest Disposal
Systems, LLC for an Order Approving a
Transfer of Ownership and Control

No. 2004-00094

APPLICATION

Applicant Lake Forest Disposal Systems LLC ("Lake Forest") hereby applies to the Kentucky Public Service Commission ("Commission") for (a) approval pursuant to KRS 278.020(4) of a transfer of ownership and control of a jurisdictional utility, and (b) any other approval necessary relating to a proposed transaction with the Louisville and Jefferson County Metropolitan Sewer District ("MSD"). In support of its request, Lake Forest states as follows:

The Applicant

1. Lake Forest is a Kentucky limited liability company with a postal address of: 10172 Linn Station Road, Louisville, KY 40223.
2. Lake Forest is authorized by the Commission to provide treatment of sewage for the public for compensation within the Commonwealth. *See* Order of 12/21/2001, Case No. 2001-00387. Its facilities constitute a subdivision treatment facility plant and appurtenant collection and transmission system located in a county containing a city of the first class and are not subject to regulation by a metropolitan sewer district. Specifically, Lake Forest treats wastewater in an unincorporated area of Jefferson County at plant facilities located at 14000 Beckley Trace, Louisville, Kentucky.
3. A certified copy of Lake Forest's certificate of organization is on file with the Commission in Case No. 2001-00387, In the Matter of Joint Application of Beckley Station Disposal Systems, Inc. and Lake Forest Disposal Systems, LLC for an Order Approving a Transfer and Acquisition of Control.

4. Lake Forest is a limited liability company whose members are J.D. Nichols, who owns a 75% interest, and Brian F. Lavin, who owns a 25% interest.

5. Copies of all orders, pleadings, and other communications regarding this Application should be directed to:

Gregory A. Wells
Lake Forest Disposal Systems, LLC
10172 Linn Station Road
Louisville, KY 40223
502-426-4800

Katherine K. Yunker
Yunker & Associates
P.O. Box 21784
Lexington, KY 40522-1784
859-255-0629

The Proposed Transaction

6. Lake Forest proposes to transfer to MSD, and MSD proposes to acquire, all the utility assets and liabilities of Lake Forest pursuant to an agreement between Lake Forest and MSD (hereinafter, "the Proposed Transaction"). The Proposed Transaction is a transfer within the meaning of KRS 278.020(4).

7. MSD was created in 1946 as a public body corporate and subdivision of the Commonwealth of Kentucky. It has complete control, possession, and supervision of the sewer and drainage system within the City of Louisville and within large portions of Jefferson County that it has annexed into its service area. KRS Chapter 76 authorizes MSD to construct facilities within its service area and to recover the cost of its services in accordance with rate schedules adopted by its governing Board. Due to the merger of the City of Louisville and the Jefferson County Governments, MSD is now considered a component unit of the new Louisville Metro Government.

8. The terms and conditions of the Proposed Transaction are set out in the Lake Forest Disposal Systems, LLC Wastewater Treatment Plant and System Agreement ("the Agreement") attached as Exhibit A.

9. By unanimous vote, the MSD Board has authorized the Executive Director to execute the Agreement, subject to approval by this Commission. *See* Minutes of the 3/8/04 MSD Board Meeting, attached as Exhibit B at p.2 (a summary of the Board meeting is available at <<http://www.msdlouky.org/aboutmsd/summary/sum04/03-08-04.htm>>).

10. If all necessary regulatory approvals are secured, the Agreement will be executed on behalf of Lake Forest and MSD. Lake Forest will provide a fully-executed copy of the Agreement to the Commission within 21 days after its signing.

11. As is proposed in Paragraph II.2 of the Agreement, Lake Forest will transfer to MSD, on January 1, 2005, all properties owned and operated by Lake Forest that are used in the operation of the Lake Forest wastewater collection and treatment system. The properties to be transferred include the wastewater treatment plant and all sewer pipes, lines, man holes, force mains, treatment plants, pumping and lift stations, easements, rights-of-ways, licenses, privileges, improvement and appurtenances necessary to the operation of the wastewater treatment plant and the attendant system. *See Agreement §§ I.C, I.E, II.2.*

KRS 278.020(4) Transfer Requirements

12. The Commission should approve the transfer by Lake Forest pursuant to KRS 278.020(4). MSD has the financial, technical, and managerial abilities to continue to provide reasonable service following the Proposed Transaction.

13. MSD is in the process of bringing its facilities and services to the area currently served by Lake Forest, and contemplates eventually discontinuing use of the Lake Forest water treatment plant and serving the Lake Forest area through the MSD comprehensive wastewater collection and treatment system. *See Agreement p.1 and §§ II.2, II.4.* The Proposed Transaction thus will serve the public interest by enabling the continued expansion and integration of the MSD system and ensuring continued provision of quality sewer treatment services to existing Lake Forest customers and to future customers in the existing Lake Forest service area.

14. Prior to the proposed transfer on January 1, 2005, Lake Forest will continue to operate the utility and otherwise bear all responsibility for the operation and maintenance of the facilities. *See Agreement § II.5.* At no time prior to January 1, 2005, will MSD have or take over operational control of the utility or its facilities; however, at MSD's election, wastewater flow may be diverted from the Lake Forest wastewater treatment plant to the MSD system. *Id.* Lake Forest's agreement to such possible diversion represents its choice about how to discharge its authority to

provide treatment of sewage for the public for compensation. In addition, Lake Forest has arranged for MSD to be responsible for dredging and de-sludging the lagoon which is a part of the Lake Forest wastewater treatment plant. *See* Agreement ¶ III.5 and Exh. G.

15. On and after January 1, 2005, MSD will operate the Lake Forest utility facilities, receive all income, and pay all expenses relating to that operation, and otherwise bear all responsibility for the operation and maintenance of the facilities. *See* Agreement ¶ II.5. To assist in the transition, the parties have made arrangements for MSD to hire Ken Lowery, who is in charge of the daily operation of the treatment facilities, as a consultant for the year following the transfer. As part of the arrangement, Lake Forest will bear nearly one-half of Mr. Lowery's consulting fee. *See* Agreement ¶ III.6. Mr. Lowery has the technical knowledge to operate the facility on a day-to-day basis; he possesses a license to operate the wastewater treatment facility and attends continuing education classes each year to maintain a current license.

16. Before January 1, 2005, the Lake Forest customers will be charged in accordance with the rates, classifications, and administrative regulations in the tariff currently on file with the Commission. A rate change is not part of the Proposed Transaction, and Lake Forest does not propose any change in its tariff due to the Agreement or the Proposed Transaction. For service on and after January 1, 2005, Lake Forest customers will be subject to all applicable MSD rules and regulations, including its regular schedule of rates, rentals, and charges. *See* Agreement ¶ II.9. MSD is to hold any security deposits or other such customer funds under the same terms as Lake Forest for the benefit, use, or credit of the customers, *id.* ¶ II.10; however, Lake Forest does not hold any amounts required to be deposited by patrons to secure utility service.

17. Lake Forest acknowledges that, until the Proposed Transfer takes place, the Commission retains jurisdiction over Lake Forest and the Lake Forest facilities, and agrees to continue to comply with all Commission regulations, including those which require the timely filing of any information, notice, or reports.

18. As demonstrated by its Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2003, attached as Exhibit C, and its control and operation of the sewer and drainage

system within the City of Louisville and portions of Jefferson County for more than 55 years, MSD has the financial, managerial, and technical abilities to provide reasonable service to the persons currently served by Lake Forest.

Other Requirements

19. The Proposed Transaction does not include an acquisition within the meaning of KRS 278.020(4) or an acquisition of control as defined by KRS 278.020(5), because MSD is not subject to the jurisdiction of the Commission.

20. If the Commission nonetheless applies KRS 278.020(5) to the Proposed Transaction, the Commission should approve the acquisition by MSD of control of the utility assets of Lake Forest. As demonstrated by this Application, the Proposed Transaction is in accordance with law, for a proper purpose, and is consistent with the public interest. Therefore, the Commission should approve the acquisition by MSD of the utility assets of Lake Forest.

21. Lake Forest proposes to transfer all of its utility assets in the Proposed Transaction and to cease providing utility service on and after January 1, 2005. However, it is not abandoning the utility or its assets within the meaning of KRS 278.020(4), because the transfer is to MSD, an entity with the capability to provide reasonable service and which is agreeing to take on the responsibility of providing service to customers in the Lake Forest service area. If the Commission nonetheless applies the KRS 278.020(4) provisions relating to abandonment of ownership or control to the Proposed Transaction, the Commission should approve Lake Forest's transfer of all of its utility assets and cessation of providing utility service.

22. The Agreement refers to certain transactions with MSD involving Floyd's Fork Investment Company ("FFIC"), an affiliate of Lake Forest. FFIC is 100% owned by J.D. Nichols.

23. Paragraph II.4 of the Agreement states that FFIC is to transfer to MSD certain real property, including easements, to be used by MSD for a pump station, a force main, and interceptor sewers. This property is not owned or controlled by Lake Forest. In addition, Lake Forest agrees "to construct or have constructed a road and bridge to the pump station site" and to act to obtain all

necessary approvals for FFIC for the construction. As indicated by the language of this provision, it is the intention of Lake Forest and MSD that Lake Forest will have the road and bridge constructed by FFIC.

24. KRS 278.020(1) does not apply to the proposed construction of a road and bridge to the site for an MSD pump station. The construction is not of “any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010,” but rather of infrastructure for motor vehicles. Furthermore, KRS 278.010(3)(f) expressly excepts from the enumeration of utility services those facilities to be used in connection with sewage collection, transmission, or treatment “subject to regulation by a metropolitan sewer district.” In addition, the facilities to be constructed are to be part of MSD’s comprehensive wastewater collection and treatment system and thus are not of “a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class” or otherwise among the services enumerated in KRS 278.010.

25. If the Commission nonetheless applies KRS 278.020(1) to the construction of a road and bridge to the site for an MSD pump station proposed in Paragraph II.4 of the Agreement, the Commission should issue a certificate that public convenience and necessity require the construction. The construction is of roadworks that are not duplicative of existing structures and is deemed useful by MSD to the extension or improvement of its comprehensive wastewater collection and treatment system. Given that the construction is for the benefit of MSD, an entity not under the jurisdiction of the Commission, and will not affect the terms or conditions under which Lake Forest provides service to its customers, Lake Forest respectfully requests waiver of all the Commission regulations particular to applications for KRS 278.020(1) construction certificates, including the requirements of 807 KAR 5:001, Section 9.

CONCLUSION

WHEREFORE, Applicant Lake Forest requests an Order of the Commission within 60 days of the filing of the Application which:

- a) Grants approval pursuant to KRS 278.020(4) for the transfer to MSD by Lake Forest of ownership and control of the Lake Forest utility assets in the Proposed Transaction; and
- b) Declares that KRS 278.020(5) is inapplicable or, in the alternative, grants approval pursuant to KRS 278.020(5) for the acquisition by MSD of control of the Lake Forest utility assets in the Proposed Transaction; and
- c) Declares that no other Commission approvals are necessary for the Proposed Transaction or, in the alternative, grants any other approvals necessary.

Respectfully submitted,

Katherine K. Yunker
Katherine S. Sanford
YUNKER & ASSOCIATES
P.O. Box 21784
Lexington, KY 40522-1784
859-255-0629
859-255-0746 (fax)

By: 

ATTORNEYS FOR APPLICANT

I, Gregory A. Wells, Senior Vice President of Lake Forest Disposal Systems, LLC, do hereby swear or affirm that the contents of the foregoing Application are true and accurate to the best of my knowledge.

George F. Dumas

Signed and sworn to before me on the 18th of March, 2004, by Gregory A. Wells as Senior Vice President of Lake Forest Disposal Systems, LLC.

(SEAL)

I hereby certify that on the 19th day of March 2004, the original and ten (10) copies of this Application were hand delivered to Thomas M. Dorman, Executive Director, Public Service Commission, 211 Sower Blvd., Frankfort, KY 40602 and that a copy was sent, via U.S. Mail, to:

Kathleen Sharkey

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TABLE OF EXHIBITS
TO APPLICATION

<u>Exhibit</u>	<u>Description</u>
A	Lake Forest Disposal Systems, LLC Wastewater Treatment Plant and System Agreement (two (2) full-size copies of Exh. E thereto are provided separately)
B	Minutes of the Louisville and Jefferson County Metropolitan Sewer District Board Meeting of March 8, 2004
C	Louisville and Jefferson County Metropolitan Sewer District Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2003 (available for viewing or download at < http://www.msdlouky.org/aboutmsd/summary/sum04/03-08-04.htm >)